

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CIVIL MINUTE ORDER

Date: November 1, 2010

JUDGE: Phyllis J. Hamilton

Case No: C-07-1658 PJH

Case Name: Oracle USA, Inc., et al., v. SAP AG, et al.,

Attorney(s) for Plaintiff: Donn Pickett
Attorney(s) for Defendant: Tharan Lanier

Deputy Clerk: Nichole Heuerman

Court Reporter: none

PROCEEDINGS

In order to facilitate counsels' preparation of their opening statements tomorrow morning, the court provides a ruling on the issue of the admissibility of the Cowlitz County evidence in this informal manner and resolves the issue as follows:

Although hearsay, Rule 703 permits the evidence to be admitted to explain the basis of the expert's opinion, and in this case, any revised opinion. Thus, the declarations will be admitted on cross examination of the expert. The documents are not, however, admissible for the truth of the matter – whether Cowlitz County was considering discontinuing support services with Oracle/PeopleSoft for reasons having nothing to do with TomorrowNow. See, e.g. *Paddack v. Dave Christensen, Inc.*, 745 F. 2d 1254 (9th Cir., 1984). Thus a limiting instruction will be given and the parties are directed to draft one for the court's approval. Because the evidence will be admitted for a limited purpose, SAP may not refer to it in its opening statement as providing support for its position that customers were terminating support agreements with Oracle for reasons unrelated to TomorrowNow's infringement.